

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) No. 3:04-CR-86
)
)
NICHOLAS HARDISON,)
)
)
Defendant.)
)

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This cause came before the undersigned on September 19, 2005, for an arraignment on the Superseding Indictment [Doc. 9] and a hearing on the defendant's Motion to Substitute Counsel and Request for Additional Time to File Motion and Extend Trial Date [Doc. 10], filed on September 15, 2005. Assistant United States Attorney Tracee Plowell was present for the government. Assistant Federal Community Defender Kim Tollison was present as the defendant's appointed counsel. Newly retained Attorney A. Philip Lomonaco was also present for the defendant. The defendant attended the hearing as well.

The defendant requests that the Court substitute Mr. Lomonaco, who has been hired by his family, for Mr. Tollison, whom the Court appointed [Doc. 4] to represent him on August 18, 2005. At the hearing, the defendant confirmed that he wanted Mr. Lomonaco to represent him. The government had no objection to this motion. Accordingly, the defendant's motion to substitute

counsel [Doc. 10] is **GRANTED**. Mr. Tollison is allowed to withdraw from the case, and Mr. Lomonaco is **SUBSTITUTED** as the defendant's attorney of record.

Following the arraignment on the Superseding Indictment, new defense counsel moved for a continuance of the October 26, trial date and the other deadlines in the case.¹ In this regard, he stated that he needed time to review discovery and prepare motions for the defendant. The government did not object to the requested continuance.

The Court finds the defendant's oral motion to continue the trial to be well taken and that the ends of justice served by granting the motion outweigh the best interest of the public and the defendant in a speedy trial. See 18 U.S.C. § 3161(h)(8)(A). The Court notes that the defendant has recently been charged in a Superseding Indictment, which adds three charges. Moreover, the defendant has retained counsel, who needs time to review discovery and prepare motions. See 18 U.S.C. § 3161(h)(1)(F). Once motions are filed, the Court will need time to conduct a hearing on these motions and, thereafter, time, not to exceed thirty days, to issue orders on the motions. See 18 U.S.C. 3161(h)(1)(J). Following these rulings, the parties will need time to prepare for trial in light of the rulings on these motions. The Court finds that all of this cannot take place before the October 26, 2005 trial date, or in less than three months, even taking into account counsels' exercise of due diligence. See 18 U.S.C. 3161(h)(8)(B)(iv). The Court has reset the trial to **December 14, 2005**.

Accordingly, the Court **GRANTS** the defendant's oral motion for a continuance. The Court further finds that the period of time between the **September 19, 2005** hearing and the new trial date

¹The Court notes that defense counsel also made this request in the Motion to Substitute Counsel and Request for Additional Time to File Motion and Extend Trial Date [Doc. 10].

of **December 14, 2005**, is fully excludable as provided by the Speedy Trial Act. See 18 U.S.C. § 3161(h)(1)(F), -(J), -(8)(A)-(B). With regard to other scheduling in the case, the government must disclose discovery relating to the new charges on or before **September 26, 2005**. Motions shall be filed by **October 31, 2005**, and responses are due by **November 14, 2005**. The parties are to appear before the undersigned for a pretrial conference on **December 5, 2005, at 9:00 a.m.**

Accordingly, it is **ORDERED**:

- (1) The defendant's Motion to Substitute Counsel and Request for Additional Time to File Motion and Extend Trial Date [**Doc. 10**] is **GRANTED**, and Attorney A. Philip Lomonaco is **SUBSTITUTED** as the defendant's attorney of record;
- (2) The defendant's oral motion to continue the trial is **GRANTED**;
- (3) The trial is reset to commence at **9:00 a.m., on December 14, 2005**, before the Honorable Thomas A. Varlan, United States District Judge;
- (4) All time between the **September 19, 2005** hearing and the **December 14, 2005** trial date is fully excludable time under the Speedy Trial Act as set forth above;
- (5) The discovery cutoff date is **September 26, 2005**;
- (6) Motions are due on **October 31, 2005**;
- (7) Responses are due on **November 14, 2005**; and
- (8) A pretrial conference is set for **December 5, 2005, at 9:00 a.m.**, before the undersigned.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge